

STATE OF ALASKA

DEPARTMENT OF LAW

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May 8, 2009

The Honorable Sarah Palin
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: SCS CSHB 113(FIN) (brf sup maj fld H) --
making supplemental appropriations, capital
appropriations, and other appropriations;
amending appropriations; and making
appropriations to capitalize funds
Our file: JU2009200430

Dear Governor Palin:

At the request of your legislative office, we have reviewed SCS CSHB 113(FIN) (brf sup maj fld H), making supplemental appropriations, capital appropriations, and other appropriations; amending appropriations; and making appropriations to capitalize funds. This is the supplemental budget for fiscal year 2009.

Section 1 of the bill would provide for supplemental appropriations for the Departments of Administration, Corrections, Fish and Game, Health and Social Services, Labor and Workforce Development, Military and Veterans Affairs, Natural Resources, Public Safety, Revenue, Transportation and Public Facilities, and the office of the governor and the Court System. Of note is the fact that many of these appropriations are actually line item reductions, which is a product of the significant decline in the state's oil revenues during fiscal year 2009. The net reduction in appropriations in sec. 1 is -\$9.75 million. Sections 2 and 3 of the bill set out the funding sources for the appropriations in sec. 1.

Sections 4 - 26 of the bill are the language sections of the fiscal year 2009 supplement budget.

Section 4 of the bill would extend the lapse date for the appropriation (originally \$1.2 million) made in 2005 to the Department of Administration, Alaska Oil and Gas Conservation Commission for North Slope gas pipeline related work.

Section 5 of the bill would make various appropriations to the Department of Commerce, Community, and Economic Development. Section 5(a) of the bill would appropriate \$890,000 from banking, securities, and corporation receipts for a banking and securities management system. Section 5(b) of the bill would appropriate \$630,000 from business licensing receipts for a secretary of state knowledge base system. Section 5(c) of the bill would appropriate \$115,000 from the general fund for a named recipient grant to the World Trade Center Alaska for an international trade program partnership for fiscal year 2010. Section 5(d) of the bill would re-appropriate the remaining balance of a 2008 appropriation for timber revitalization for a named recipient grant to the Southeast Conference for the Southeast Intertie for fiscal year 2010.

Section 6 of the bill would re-appropriate the remaining balance, but not to exceed \$500,000, of a 2008 appropriation for behavioral health administration to the Department of Corrections for secure detoxification and treatment for involuntary substance abuse commitment for fiscal year 2010.

Section 7(a) - (c) of the bill would make amendments to appropriations to the Department of Education and Early Development in the fiscal year 2009 capital budget. Section 7(d) of the bill would reduce an appropriation to the Department of Education and Early Development for the school incentive program in the fiscal year 2009 operating budget. Section 7(e) of the bill would appropriate \$60,000 from Alaska Commission on Postsecondary Education receipts to the Commission on Postsecondary Education for program administration. Under sec. 21(b) of the bill, sec. 7(e) of the bill is contingent on the passage of HB 172, which passed. Thus, the contingency would be satisfied if HB 172 is enacted into law.

Section 8(a) of the bill would appropriate approximately \$500,000 from the general fund and statutory designated program receipts to the Department of Health and Social Services to repay the federal government for overpayments for Medicaid provider services. Section 8(b) of the bill would amend an appropriation to the Department of Health and Social Services in the fiscal year 2008 mental health budget. Section 8(c) appropriates \$944,000 from the capital income fund to the Department of Health and Social Services for renovation of the McLaughlin Youth Center. Section 8(d) of the bill would re-appropriate the remaining balance of a 2000 appropriation for Chevak school replacement to the Department of Health and Social Services for renovation of the McLaughlin Youth Center. Section 8(e) of the bill would amend an appropriation to the Department of Health and Social Services in the

fiscal year 2009 capital budget. Section 8(f) of the bill would appropriate \$45,000 from the general fund to the Department of Health and Social Services to implement the Interstate Compact for Juveniles for fiscal year 2010. Under sec. 21(d) of the bill, sec. 8(f) of the bill is contingent upon the passage of HB 141, which passed. Thus, the contingency would be satisfied if HB 141 is enacted into law.

Section 9(a) - (d) of the bill would re-appropriate the remaining balances of various appropriations to the Department of Labor and Workforce Development for gas pipeline activities for fiscal year 2010. Section 9(f) of the bill would provide that if the amount available for appropriation under subsecs. (a) - (c) is less than \$325,000, then the re-appropriations shall be reduced on a pro rata basis. Section 9(e) of the bill would amend an appropriation pertaining to the technical vocational education program in the fiscal year 2009 capital budget.

Section 10(a) and (b) of the bill would make appropriations to the Department of Law for paying judgments and settlements against the state. Section 10(c) of the bill re-appropriate the remaining balance of a 2008 appropriation related to Economic Impacts of ESA Listings to the Department of Law for assessing and protecting the state's interest related to Endangered Species Act for fiscal year 2009 and fiscal year 2010.

Section 11(a) of the bill would appropriate \$2.47 million from federal receipts to the Department of Military and Veterans' Affairs for Alaska Military Youth Academy infrastructure improvements. Section 11(b) of the bill would appropriate \$31,300 from the general fund to the Department of Military and Veterans' Affairs for retirement benefits for members of the Alaska Territorial Guard. Under sec. 21(c) of the bill, sec. 11(b) of the bill is contingent upon the passage of SB 89, which passed and has been signed into law. Thus, the contingency is satisfied.

Section 12 of the bill would re-appropriate the remaining balance of a 2004 appropriation for North Slope gas pipeline related work to the Department of Natural Resources for permitting and application processing related to the North Slope gas pipeline right-of-way.

Section 13(a) and (b) of the bill would amend the appropriation for the \$1200 per person 2008 resource rebate to provide that it was one-time in nature and that the appropriation does not lapse. Section 13(c) of the bill would make an amendment to an appropriation to the Department of Revenue in the fiscal year 2009 capital budget. Under sec. 21(e) of the bill, sec. 13(d) of the bill was contingent on the passage of SB 171, relating to deceased permanent fund dividend applicants. SB 171 did not pass--therefore the contingency is not satisfied.

Section 14(a) of the bill would re-appropriate the remaining balances of various appropriations to the Department of Transportation and Public Facilities for construction and maintenance in prior fiscal years of Alaska Railroad crossings on state roads. Section 14(b) of the bill would make an amendment to an appropriation to the Department of Transportation and Public Facilities in the fiscal year 2009 capital budget. Section 14(c) of the bill would re-appropriate the remaining balance of a 2001 appropriation, estimated to be \$350,400, for emergency communications to the Department of Transportation and Public Facilities for Juneau area bridge repair. Section 14(d) of the bill would appropriate \$1.6 million from the general fund to the Department of Transportation and Public Facilities to implement the collective bargaining agreement with the Inlandboatmen's Union of the Pacific for fiscal year 2009.

Section 14(e) of the bill would re-appropriate money to the Department of Transportation and Public Facilities for Adak air field maintenance and operations. This money was first appropriated in sec. 29(c), ch. 159, SLA 2004 from Adak airport operations, federal receipts, to the Department of Transportation and Public Facilities for a five-year contract to meet mobilization requirements and improvements and to provide immediate and long-term operation and maintenance of the Adak air field. The unexpended balance was re-appropriated in sec. 57, ch. 3, FSSLA 2005 for a multi-year contract for building, runway, and system improvements and to provide immediate and long-term operation and maintenance of the Adak air field. The 2004 appropriation was apparently identified as operational monies subject to lapse. The 2005 re-appropriation was identified as capital funding subject to lapse under AS 37.25.020. Under sec. 22(d), these funds would lapse on June 30, 2014.

Section 14(f) and (g) of the bill would appropriate \$408,200 and \$463,700, respectively, from the general fund to the Department of Transportation and Public Facilities to implement the collective bargaining agreements with the International Organization of Masters, Mates and Pilots, and the Marine Engineers' Beneficial Association for fiscal year 2009. Under sec. 21(a) of the bill, these subsections are contingent on the ratification of these collective bargaining agreements by their members.

Section 14(h) of the bill would amend the scope of a capital appropriation in the fiscal year 2007 capital budget. Sections 14(i) - (n) would make various appropriations and re-appropriations relating to the Department of Transportation and Public Facilities.

Section 15 of the bill would make an amendment to the appropriation for National Petroleum Reserve Grants in the fiscal year 2009 capital budget.

Section 16 of the bill would make various amendments to the state debt and other obligations section in the fiscal year 2009 operating budget.

Section 17(a) of the bill would ratify \$1.47 million of fire suppression expenditures of the Department of Natural Resources in fiscal year 2008. Section 17(b) of the bill would ratify certain expenditures to reverse the negative account balances in the state accounting system.

Section 18 of the bill would re-appropriate the remaining balances of a variety of appropriations to the Alaska capital income fund.

Section 19 of the bill would appropriate an estimated \$7,022,000 to the office of the governor for the development of an in-state natural gas pipeline. Subsection (a) of the bill would appropriate \$4,322,000 from the Alaska capital income fund (AS 37.05.565), and subsec. (b) re-appropriates the remaining balance, estimated to be \$2,700,000, of a 2008 appropriation for gas pipeline implementation to the Department of Natural Resources for the development of an in-state gas pipeline. Subsection (c) provides legislative intent regarding the appropriation. The appropriation is to be used solely for planning, coordinating and facilitating the construction and ownership of a natural gas pipeline that will serve Fairbanks, Southcentral Alaska, and any other regions of the state that could be served at commercially reasonable rates. The funds may be used to evaluate alternative routes, assist in preparing cost estimates, obtain right-of-way permits, and work with entities to promote gas supply and purchase contracts. The office of the governor is encouraged to coordinate with entities that could build, own and operate the pipeline, and, to the maximum feasible extent, to use existing work prepared by other state agencies. The legislative intent also requests the office of the governor submit monthly written reports to the president of the senate, speaker of the house, and all legislators reporting on progress, the status of contracting, and other matters.

We discuss at length the enforceability of intent language in our operating budget bill review. See 2009 Op. Att'y Gen. 2-3 (May 8; JU2009200407). The intent language in sec. 19(c) strays into the administration of the appropriation. It also requires reporting -- we have advised that reporting requirements are typically set out in statute. *Id.* at 3. Accordingly, we think there are questions as to the enforceability of this intent language, but the affected state agencies may comply as a matter of comity if they wish.

Section 20 of the bill appropriates from the general fund to the community revenue sharing fund an amount equal to 20 percent of certain production tax revenues, not to exceed \$60 million.

Section 21 of the bill would provide for certain contingencies, discussed above.

Section 22 of the bill would provide for certain lapse dates for various sections, including sections pertaining to capital projects.

Section 23 of the bill would provide for retroactivity for certain sections.

Sections 24 - 26 of the bill set out the effective dates of the bill.

This bill presents no significant legal or other issues.

Sincerely,

Richard A. Svobodny
Acting Attorney General

RAS:MAB:ajh